(Court No.- Hon.C.J.'s Court Old Block)

Criminal Misc. Application No.7 of 2001

Ajay Kumar and Devendra Singh Applicants.

Versus

State of Uttaranchal and another Opposite parties.

Hon'ble Irshad Hussain, J.

Aggrieved by summoning order under section 204 of the Code of Criminal Procedure passed on 5.1.2001 (Annexure VI) in Criminal Complaint Case No.900 of 2000, K.P. Singh Versus Devendra Singh and another, under Section 500/501 of I.P.C., this Criminal Misc. Application under Section 482 of the Code has been preferred.

The written complaint was filed with the allegation that the applicants, the employees of the Mussoorie Dehradun Development Authority got issued notice of illegal construction and encroachment in contravention of the provisions of the Regulation of Building and Development Act and while applicant No.2 went to the site on 14.6.2000, he abused the complainant by levelling charge of "Gunda" in the presence of good number of persons of the loclity present there at the time. The uncomplimentary remarks made at the time by applicant no.1 in the presence of witnesses Harbeet, Jagdish, Lokendra and many others resulted in the defamation of the complainant who on knowing of it and the attitude of those persons of the locality, and also the social neglect, got mental harassment. The

acts of the accused, thus, make them liable to punishment for defamation under Section 500/501 of the I.P.C. The notice issued against the complainant was withdrawn as the same being false and fictitious and that the intention of the accused had been to defame and hurt the reputation of the complainant.

The statement of the complainant/apposite party K.P.Singh was recorded under section 200 Cr.P.C. and documentary evidence in the form of the notice of the Mussoorie Dehradun Development Authority, its reply sent by the complainant, cancellation of the notice by Vice Chairman of the Development Authority were filed in support of the allegations of the complaint and the learned Magistrate on the basis of the material on record was of the view that there are sufficient grounds for proceeding against the accused and thereby went to pass the summoning g order under section204 of the Code so that they may stand trial for offence punishable under section 500/501 of the I.P.C.

Learned counsel for the applicant-revisionists submitted that firstly the applicants-accused being he public servants and acting in such capacity while issuing the notice against the wrong doer could not have been prosecuted without obtaining legal sanction under Section 197 of the Code and secondly because there were no sufficient reasons to proceed against them for offence punishable under section 500/501 of the I.P.C. and that the impugned order, therefore, suffers from the vice of illegality and impropriety. On the other hand, it was argued that where was no nexus between the act of omission committed by the applicants-accused in abusing the complainant with his action of issuing notice against the complainant

and, therefore, there was no occasion to obtain any sanction before prosecuting the applicants-accused.

Having heard the respective submissions in the light of the material on record and legal aspect of the matter, it need to be mentioned at the outset that the submissions raised by the learned counsel for the applicants-accused have force and this revisions fit to be allowed.

The reasons are that as is evident from the notice dated 9.8.2000 sent against the complainant-opposite party (Annexure I), there was material with the Mussoorie Dehradun Development Authority that without sanctioned map constructions were raised on the disputed site and as a consequence thereof notice under Section 27(1) of the U.P. Urban Planning & Development Act, 1973 was issued by the applicants nos.1 and 2 in their capacity as Junior Engineer and Assistant Engineer respectively of the Mussoorie Dehradun Development Authority. Opposite party-complainant gave a reply on 18.8.2000 (Annexure II) informing that no illegal constructions have been made by him as indicated in the above notice. On enquiry the mistake was corrected and the notice sent to the respondent-complainant was withdrawn per order dated 26.08.2000 (Annexure III) and it was decided that the notice be sent for illegal construction against Smt. Prem Kaur, wife of Sri Jagdish. Pursuant to this notice for illegal construction was issued against Smt. Prem Kaur by the applicants-accused (Annexure IV). Perusal of the notice dated 9.8.2000 (Annexure I) sent to the opposite party-complainant and subsequent notice dated 25.8.2000 (Annexure IV) sent to Smt. Prem Kaur make it obvious that the description of the disputed site and the

illegal construction is identical. It means that there was mistake about the identity of the person who actually was responsible for the illegal construction. There is nothing on record to indicate that the applicants-accused have not acted bonafidely while issuing notice earlier to respondent-complainant and since the mistake was bonafide, it cannot be said that they intended to cause hurt or defame the respondent-complainant by issuing the notice.

According to the respondent-complainant, the Applicant no.1 went to the disputed site, named as Bhandari Bagh Chauraha to serve the notice on the respondent-complainant. Even if he had gone there, there was no occasion for him to have made any uncomplimentary remarks against the character and reputation of the respondent-complainant. In fact, the act of going of the Applicant no.1 (Ajay Kumar) to the disputed site to serve the notice has a reasonable nexus with his official duty. Besides it, the Applicant no.2 (Devendra Singh), the Assistant Engineer has also acted in his official capacity while issuing the notice for the illegal act of construction and in view thereof, they were entitled to immunity from criminal proceeding without sanction as enjoined under section 197 of the Code of Criminal Procedure. On behalf of the applicant-revisionists, reliance was placed on a decision of Hon'ble Supreme Court in the matter of Gauri Shankar Prasad Versus State o f Bihar and another (2000(2) Crimes, 176 (S.C.), wherein a Sub Divisional Magistrate who had visited the disputed site for the purpose of removal of encroachment from Government land, was alleged to have entered the chamber of the wrong-doer and used uncomplimentary language against the complainant as a consequence of which complaint was filed against

him. The contention of the complainant was accepted in view of insufficient material about the allegation and it was found that the visit of the said officer on the site has a reasonable nexus with his official duty and he was found entitled to be immuned form the criminal proceedings without sanction under section 197 Cri.P.C. The facts of the instant case are quite similar to the facts of the reported decision in as much as there was no reasonable ground to believe that the applicants-accused malafidely got issued notice against the respondent-complainant and that accused no.2 while on the disputed site to deliver the notice used filthy language against the respondent-complainant and this being the situation, it cannot be said that the acts of the complainant by the respondent-complainant against the applicants have no reasonable nexus with the official duty of the applicants-accused. Consequently the applicants-accused were entitled to the immunity from criminal proceedings without sanction under section 197 of the Cri.P.C. It is admitted fact that no sanction was obtained and, therefore, the summoning order passed by the learned Magistrate being illegal and without jurisdiction, deserves to be set aside.

So far as the other limb of the argument of the learned counsel for the applicants is concerned, it need to be mentioned that as referred above, there was no prima facie material before the learned Magistrate to accept the allegations that applicant no.1 has had occasion to abuse the opposite party-complainant at the disputed site where he is said to have visited to serve the notice for illegal construction without sanctioned map. In the face of facts of the case, there was no sufficient ground for proceeding against the applicants-

accused and the summoning order on this count also suffers from the vice of impropriety and need to be set aside.

The Criminal Misc. Application is allowed and the order dated 5.1.2001 (contained in Annexure No.VI) in Case No.900 of 2000, K.P. Singh Versus Devendra Singh and another pending in the Court of A.C.J.M.,III, Dehradun is set aside.

(Irshad Hussain, J.)

Nainital.
April 26, 2002.